

## Jennifer Christopherson

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**From:** jgonnelly@gmail.com on behalf of Jenn Gonnely <jenn@gonnely.com>  
**Sent:** Wednesday, May 15, 2013 8:15 AM  
**To:** Curtis S. Bramble; Jim Dunnigan; Jennifer Christopherson  
**Subject:** Prohibit Discretionary Clauses in Insurance Policies

May 15, 2013

Dear Chairman Bramble and Chairman Dunnigan,

The League of Women Voters of Utah is writing to urge you to consider strengthening the prohibition against the use of discretionary clauses in health, accident, long-term care, and disability income insurance contracts.

A discretionary clause allow insurers to freely interpret their policies to their advantage, putting consumers at risk of losing the coverage they count on and have been paying into in good faith.

In 2002, Merwin Stuart, Insurance Commissioner of Utah issued the following statement regarding these clauses,

"Discretionary clauses are inequitable and unfair because they attempt to give additional power to insurers who are already in a superior bargaining position. The insurer has control when drafting the terms of the contract, as well as industry knowledge and experience far superior to that of the typical individual or corporation seeking insurance coverage. Courts generally recognized that insureds and insurers are in unequal bargaining positions.

Discretionary clauses are misleading, deceptive, obscure, and are not in the public interest, and they encourage misrepresentation because the clauses lead citizens to believe that the insurer has authority to give a binding and final interpretation of the contract and they have no other legal recourse. Such language is intimidating and could discourage a policyholder from appealing a claim denial."

Despite release of this statement no statutory action has yet been taken to eliminate such clauses from being included in health, death or disability insurance in the state of Utah. So far, 22 states have taken action to limit the use of discretionary clauses. The National Association of Insurance Commissioners (NAIC) has stated that discretionary clauses are inconsistent with consumer rights because they create an uneven playing field for consumers who challenge a denial of coverage.

The League of Women Voters' position supports U.S. health care policy goals that include the equitable distribution of services.

Respectfully,

Marilyn O'Dell  
Co-President  
League of Women Voters of Utah

Nelda Bishop  
Co-President  
League of Women Voters of Utah